HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 687 Utilities
SPONSOR(S): Energy & Utilities Subcommittee; La Rosa and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 2 N, As CS	Keating	Keating
2) Commerce Committee		Keating	Hamon

SUMMARY ANALYSIS

The bill creates the Advanced Wireless Infrastructure Deployment Act, which establishes statewide rates, terms, and conditions under which wireless providers – including persons who provide wireless services and persons who build or install wireless communication transmission equipment, facilities, and support structures – may place certain "small wireless facilities" on, under, within, or adjacent to any utility pole or any other freestanding structure within the public rights-of-way that is owned by an "authority" (i.e., a local government entity or the Department of Transportation (DOT)) if the structure is designed to support, or capable of supporting, small wireless facilities. The bill provides that an authority may not prohibit, regulate, or charge for the collocation of small wireless facilities in the public rights-of-way, except as specified in the bill.

Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

The bill provides that an authority must approve an application to collocate small wireless facilities on poles and structures within the public rights-of-way unless the proposed collocation does not meet certain codes, including certain historic preservation zoning regulations and uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. An authority may not apply other local land development or zoning codes in its review. The bill does not apply to privately owned utility poles and wireless support structures or to utility poles owned by an electric cooperative or municipal electric utility.

The bill establishes terms under which an authority must perform "make-ready" work to prepare or modify a utility pole to accommodate additional facilities.

The bill appears to have a negative impact on state government revenues, and it will have a negative impact on local government revenues if the collocation rates set forth in the bill are lower than rates previously established (or that could otherwise be established under existing authority) by local governments or are lower than the rates established by agreement between wireless providers and local governments. The bill appears to have an indeterminate fiscal impact on state and local government expenditures.

The bill provides an effective date of July 1, 2017.

This bill may be a Mandate requiring a two-thirds vote of the membership. See Mandates section of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Use of Right-of-Way by Communications Services Providers

The Department of Transportation (DOT) and each local governmental entity that has jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with regard to the placement and maintenance of utility[1] facilities across, on, or within the right-of-way limits of any road or publicly owned rail corridors under its jurisdiction. The authority may authorize any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, to use a right-of-way for a utility in accordance with the authority's rules or regulations.[2] A utility may not be installed, located, or relocated within a right-of-way unless authorized by a written permit.[3] The permit must require the permit holder to be responsible for any damage resulting from the permitted use of the right-of-way.[4]

Municipalities and counties must treat providers of communications services in a "nondiscriminatory and competitively neutral manner" when imposing such rules or regulations. The rules and regulations must be "generally applicable" to all such providers and may not require such providers to apply for or enter into an individual license, franchise, or other agreement as a condition of using the right-of-way.[5]

A municipality or charter county may require and collect permit fees from any providers of communications services that use or occupy municipal or county roads or rights-of-way.[6] To ensure nondiscriminatory and competitively neutral permit fees for communications services providers, municipalities and charter counties must elect to collect permit fees for use of the right-of-way in one of two ways. First, the local government can elect to require the payment of fees from any such providers, provided that the fees are "reasonable and commensurate with the direct and actual cost of the regulatory activity," "demonstrable," and "equitable among users of the roads or rights-of-way."[7] If the local government makes this election, the rate of its local communications service tax[8] is automatically reduced by a rate of 0.12 percent. Second, the local government can elect not to require payment of fees from any such provider and may increase its local communications service tax by a rate of up to 0.12 percent. A noncharter county may make the same election. If it chooses not to impose permit fees, it may increase its local communications service tax by a rate of up to 0.24 percent to replace the revenues it would have received for such permit fees.[9]

[1] Section 337.401(1)(a), F.S., refers to "any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the 'utility'."
[2] s. 337.401(2), F.S.
[3] *Id.*
[4] *Id.*
[5] s. 337.401(3)(a), F.S.
[6] s. 337.401(3)(c)1.a.(I), F.S.
[7] s. 337.401(3)(c)1.a.(I)., F.S. Such costs include the costs of issuing and processing permits, plan reviews, physical inspection, and direct administrative costs.
[8] Local communications services taxes are authorized and governed by ch. 202, F.S.
[9] s. 337.401(3)(c)2., F.S.

Local Government Pole Attachment Fees

With certain exceptions, the authority of a public body[10] to require taxes, fees, charges, or other impositions[11] from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state.[12] Among the taxes, fees, and charges *not* preempted[13] are the following:

- Pole attachment fees charged by a local government for attachments to its utility poles.
- Amounts charged for the rental or other use of property owned by a public body which is not in the public rights-of-way to a dealer of communications services for any purpose, including, but not limited to, the placement or attachment of equipment used in the provision of communications services.
- Permit fees related to placing or maintaining facilities in or on public roads or rights-of-way pursuant to s. 337.401, F.S.

Accordingly, local governments may establish pole attachment fees for communications services facilities by ordinance or agreement.

Collocation of Wireless Communications Facilities in DOT Rights-of-Way

With respect to property acquired for state rights-of-way, the DOT is responsible for negotiating leases that provide access for wireless communications facilities.[14] Payments required under such leases must be reasonable and reflect the market rate for the use of the state government-owned property. DOT is authorized to adopt rules for granting such leases, including terms and conditions.[15]

The DOT has entered into three competitively bid leases that allow the lessee to place wireless facilities on the DOT's rights-of-way or to sublease those rights to a third-party for the same purpose.[16] The DOT indicates that it derives an income stream from each of these agreements.[17] According to the DOT, the Turnpike System including the Western Beltway, Suncoast Parkway, Veterans Expressway, I-4 connector, Polk Parkway, Sawgrass Expressway, Turnpike Mainline, Beachline Expressway, Seminole Expressway are not subject to rights-of-way leases for wireless facilities.[18]

Federal Law on Wireless Facilities Siting

The FCC interprets and implements certain provisions of federal law which are designed, among other purposes, to "remove barriers to deployment of wireless network facilities by hastening the review and approval of siting applications by local land-use authorities."[19] These statutory provisions preserve

[10] A "public body" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state. s. 1.01(8), F.S.
[11] Section 202.24(2)(b), F.S., provides that a tax, charge, fee, or other imposition includes any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services.
[12] s. 202.24(1), F.S.
[13] *See* s. 202.24(2)(c), F.S.
[14] s. 365.172(13)(f), F.S.
[15] *Id.*
[16] Florida Department of Transportation, Agency Analysis of 2017 House Bill 687, p. 3 (Jan. 30, 2017) (*DOT Analysis)*. The analysis identifies the following leases: American Tower/Lodestar, entered into on March 25, 1999, with a thirty-year term; Rowstar #1, entered into on December 4, 2014, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar; and Rowstar #2, entered into on December 29, 2016, with a ten-year term, extendable for up to four additional ten year terms at the discretion of Rowstar.
[17] *Id.*
[18] *Id.*
[19] *See* FEDERAL COMMUNICATIONS COMMISSION, *Comments Sought on Mobilitie, LLC Petition for Declaratory Ruling and Possible Ways to Streamline Deployment Of Small Cell Infrastructure* (*FCC 2016 Notice*), WT Docket No. 16-421, DA 16-1427, December 22, 2016, at p. 2; 47 U.S.C. §§253, 332(c)(7), and 1455(a).

state and local governments' authority to control the "placement, construction, and modification of personal wireless service facilities" and to manage "use of public rights-of-way," but they prohibit state and local governments from using certain unreasonable criteria in making such decisions.[20] Under the authority granted by these provisions, the FCC has issued orders to clarify the "maximum presumptively reasonable time frames for review of siting applications and the criteria local governments may apply in deciding whether to approve them."[21]

Federal law establishes that state and local governments may not establish laws, regulations, or other requirements that prohibit or have the effect of prohibiting the ability of any entity to provide personal wireless services[22] or other telecommunications services.[23] The FCC has interpreted these provisions as precluding state or local government actions that materially inhibit the ability of an entity to compete in a fair and balanced legal and regulatory environment. Federal circuit courts have varied on the particular standards to apply in this area.[24]

Further, federal law provides that state and local governments may manage the public rights-of-way and may require fair and reasonable compensation from telecommunications providers for use of those rights-of-way on a nondiscriminatory basis.[25] The FCC has not interpreted this provision, and federal circuit courts have varied on the issue of what constitutes "fair and reasonable" compensation.[26]

In December 2016, in response to a petition for declaratory ruling, the FCC issued a public notice seeking comment on streamlining the deployment of small cell infrastructure by improving wireless facilities siting policies.[27] In its notice, the FCC summarized the issues:

> To satisfy consumers' rapidly growing demand for wireless broadband and other services, wireless companies are actively expanding the network capacity needed to maintain and improve the quality of existing services and to support the introduction of new technologies and services. In particular, many wireless providers are deploying small cells and distributed antenna systems (DAS) to meet localized needs for coverage and increased capacity in outdoor and indoor environments. Although the facilities used in these networks are smaller and less obtrusive than traditional cell towers and antennas, they must be deployed more densely – i.e., in many more locations – to function effectively. As a result, local land-use authorities in many areas are facing substantial increases in the volume of siting applications for deployment of these facilities. This trend in infrastructure deployment is expected to continue, and even accelerate, as wireless providers begin rolling out 5G services.
>
> This creates a dilemma. We recognize, as did Congress in enacting Sections 253 and 332 of the Communications Act, that localities play an important role in preserving local interests such as aesthetics and safety. At the same time, the Commission has a statutory mandate to facilitate the deployment of network facilities needed to deliver more robust wireless services to consumers throughout the United States. It is our responsibility to ensure that this deployment of network facilities does not become subject to delay caused by unnecessarily time-consuming and costly siting review processes that may be in conflict with the Communications Act.

[20] *Id.* at p. 5, citing 47 U.S.C. §§253(c) and 332(c)(7)(A).
[21] *Id.* at p. 2
[22] Under 47 U.S.C. 332(c)(7), "personal wireless services" are defined as "commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services."
[23] *FCC 2016 Notice* at p. 10, citing 47 U.S.C. §§253(a) and 332(c)(7).
[24] *Id.*
[25] *Id.* at p. 12, citing 47 U.S.C. §253(c).
[26] *Id.* at p. 13.
[27] *Id.*

The stated purpose of the FCC's request for comments is to develop a factual record to assess whether and to what extent the process of local land-use authorities' review of siting applications is hindering, or is likely to hinder, the deployment of wireless infrastructure. Among the matters on which the FCC is seeking comment and guidance are questions specifically related to access to state and local government rights-of-way and the fees imposed for such access.[28] The FCC indicated that this "data-driven evaluation will make it possible to reach well-supported decisions on which further Commission actions, if any, would most effectively address any problem, while preserving local authorities' ability to protect interests within their purview."[29]

Deployment of Small Wireless Facilities in Florida

Wireless service providers and wireless infrastructure providers have begun the deployment of small cell wireless infrastructure in various jurisdictions within Florida. In some instances, the providers have sited these facilities pursuant to local ordinances or have negotiated with local governments to establish rates, terms, and conditions for siting these facilities. In other instances, the providers indicate that their efforts have been hampered to varying degrees by some local governments that have imposed conditions or moratoria on the siting of small cell facilities.[30] In general, these moratoria indicate that they are temporary measures designed to allow the local government to review their standards, regulations, and requirements related to siting of wireless communications facilities to address small cell facilities.[31] In one instance, the municipality has renewed its moratoria on multiple occasions, extending its effect from the original six months to over 30 months.[32]

Effect of Proposed Changes

HB 687 establishes statewide rates, terms, and conditions under which wireless providers – including persons who provide wireless services[33] and persons who build or install wireless communication transmission equipment, facilities, and support structures – may place certain wireless facilities[34] on, under, within, or adjacent to any utility pole or any other freestanding structure within the public rights-of-way that is owned by an "authority" (i.e., a local government entity or the Department of Transportation)[35] if the structure is designed to support, or capable of supporting, small wireless facilities.[36] Under the bill, a utility pole includes any pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The bill excludes utility poles that are owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality.

[28] *Id.* at pp. 8-14.
[29] *Id.* at p. 2.
[30] These providers state that the following 11 municipalities have adopted moratoria: Boynton Beach, Coral Springs, Fort Meade, Fort Lauderdale, Gainesville, North Lauderdale, Port Orange, Safety Harbor, Southwest Ranches Stuart, Sunrise, and Tallahassee. The providers also state that the following 6 counties have adopted moratoria: Highlands, Martin, Pasco, Pinellas, Sarasota, and St. Lucie.
[31] *See, e.g.*, City of Tallahassee, Resolution No. 16-R-42, December 2016.
[32] City of Fort Lauderdale, Resolution No. 17-30, February 21, 2017.
[33] As defined in the bill, "wireless services" means "any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile using wireless facilities."
[34] As defined in the bill, "wireless facilities" means "equipment at a fixed location which enables wireless communications between user equipment and a communications network," including "radio transceivers, antennas, wires, coaxial or fiber optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications" and includes small wireless facilities.
[35] The term "authority" is not defined in the bill but is defined in s. 337.401(1)(a), F.S., to mean DOT and local government entities that have jurisdiction and control of public roads or publicly owned rail corridors. It appears that the bill intends to use this meaning.
[36] Such freestanding structures are referred to in the bill as "wireless support structures" and include monopoles, guyed or self-supporting towers, billboards, and other existing or proposed structures capable of supporting wireless facilities, but exclude utility poles.

The bill provides that an authority may not prohibit, regulate, or charge for the collocation[37] of small wireless facilities in the public rights-of-way, except as specified in the bill. Small wireless facilities are defined in the bill as wireless facilities that meet the following size limitations:

- Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, if the antenna has exposed elements, the antenna and all of its exposed elements would fit within an enclosure of the same volume.
- All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume.

Certain associated ancillary equipment is not included in the calculation of these equipment volume limitations. Such equipment includes electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs to connect power and other services.

A small wireless facility is defined by the bill as a "micro wireless facility" if its dimensions are not larger than 24 inches in length, 15 inches in width, and 12 inches in height, with an exterior antenna, if any, no longer than 11 inches. The bill provides that the placement of such facilities by a provider that is authorized to occupy the rights-of-way and that remits communications service taxes under ch. 202, F.S., is not subject to approval or fees imposed by an authority. The bill also exempts routine maintenance and the replacement of existing wireless facilities with wireless facilities that are substantially similar or the same size or smaller. Both DOT and local governments assert that this may present safety problems or interfere with planned work in the right-of-way due to lack of coordination.[38]

The bill provides that an authority may require permit fees for collocation of small wireless facilities only in accordance with s. 337.401(3), F.S. The bill provides specific terms and conditions under which the authority may process and issue permits.

Authority Review Process

The bill requires an authority to approve or deny an application for a permit to collocate small wireless facilities within 60 days of receipt of the application and to inform the applicant of the outcome through electronic mail. If the application is not processed within that time, the application is deemed approved. An applicant may, at its discretion, file a consolidated application and receive a single permit to collocate multiple small wireless facilities, subject to the same 60-day time period for review.

The bill provides that an authority must approve an application unless the proposed collocation does not meet certain codes. The bill provides that such codes include uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, or local amendments to those codes, enacted solely to address threats of destruction of property or injury to persons. Such codes also include local government historic preservation zoning regulations consistent with the preservation of local zoning authority under federal law. An authority may not apply any other local land development or zoning codes in its review. The bill provides that an application must be processed on a nondiscriminatory basis.

Within 10 days of receipt of an application, an authority must determine and notify the applicant by electronic mail as to whether the application is complete. If it determines that the application is not complete, the authority must specifically identify any missing information. An application is deemed complete if the authority fails to notify the applicant within 10 days or when all required documents, information and fees have been submitted.

[37] As defined in the bill, "collocate" or "collocation" means "to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole."
[38] *See, e.g., DOT Analysis* at p. 6.

If an application is denied, the authority must specify in writing the basis for the denial, including specific code provisions, and must send this information by electronic mail to the applicant on the day the application is denied. The applicant may cure the noted deficiencies by resubmitting the application within 30 days after notice of denial. The authority must then approve or deny the revised application within 30 days or the application will be deemed approved. The authority's review of the revised application is limited to the deficiencies cited in the notice of denial.

Limitations on Permit Conditions

The bill establishes certain limitations on the power of an authority to impose conditions on a permit to collocate small wireless facilities in the public rights-of-way.

The bill prohibits an authority from directly or indirectly requiring an applicant to perform services unrelated to the collocation. The bill identifies such prohibited services to include in-kind contributions to the authority, including reserving fiber, conduit, or pole space for the authority.

The bill prohibits an authority from requiring an applicant to provide more information than is required of electric utilities or other communications service providers that are not wireless service providers.

The bill also prohibits an authority from requiring the placement of small wireless facilities on any specific pole or category of poles or requiring the placement of multiple antenna systems on a single pole. Further, the bill prohibits an authority from limiting the placement of small wireless facilities by minimum separation distance. An authority may not impose a maximum height limitation for such facilities, except that:

- The authority may limit the height of the small wireless facility to no more than 10 feet above the tallest existing utility pole (measured from "grade in place") within 500 feet of the proposed location.
- The authority may limit the height to 60 feet if there is no utility pole within 500 feet of the proposed location.

These height limitations do not apply if the proposed collocation is on a utility pole or other support structure constructed on or before June 30, 2017, and the small wireless facility does not extend more than 10 feet above the structure.

Collocation on Utility Poles

The bill provides that an authority shall approve the collocation of small wireless facilities on authority utility poles and establishes specific requirements for such collocations. The bill prohibits an authority from entering into an exclusive agreement with any person for the right to attach equipment to authority utility poles.[39] The bill requires that rates and fees for collocations on authority utility poles must be nondiscriminatory, regardless of the services provided by the collocating person.

The bill specifies that the rate to collocate equipment on authority utility poles may not exceed *the lesser of*:

- The annual recurring rate that would be permitted by FCC rules adopted under 47 U.S.C. §224(d), if the collocation rate were regulated by the FCC, *or*
- $15 per year per pole.

[39] According to DOT, its current lease agreements grant various levels of exclusivity, including exclusive rights of lessees to sublease to other entities. This exclusivity would be lost under the bill, potentially leading to litigation over contract impairment. *DOT Analysis* at p. 7.

The rates authorized by the FCC under 47 U.S.C. §224(d) are the rates applicable to pole attachments by cable television systems. Under this section, these rates are capped at "an amount determined by multiplying the percentage of usable space … which is occupied by the pole attachment, by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit or right-of-way." The FCC sets rates under a different provision of law, 47 U.S.C. §224(e), for pole attachments by telecommunications carriers providing telecommunications services. In both cases, the FCC rates do not apply to attachments to government-owned utility poles.[40]

The bill requires an authority to revise any existing pole attachment rates, fees, and other terms by January 1, 2018, to comply with the rates, fees, and other terms specified in the bill. Further, the bill provides that by the later of January 1, 2018, or 3 months after receiving its first request to collocate a small wireless facility on an authority utility pole, the person owning or controlling the authority utility pole must, by ordinance or otherwise, make available rates, fees, and terms that comply with the bill. The bill provides that such rates, fees, and terms must be nondiscriminatory, competitively neutral, and commercially reasonable.

The bill establishes provisions related to "make-ready" work that may be required of an authority. "Make-ready" work generally refers to the modification of poles or lines or the installation of guys and anchors to accommodate additional facilities.

- For authority utility poles that supports aerial facilities used to provide communications or electric service, the bill requires that parties comply with the process for make-ready work under 47 U.S.C. §224 and the FCC's implementing regulations[41] and provides that make-ready work may include pole replacement, if necessary.
- For authority utility poles that *do not* support aerial facilities used to provide communications or electric service, the bill requires the authority to provide a good faith estimate for any necessary make-ready work within 60 days after receipt of a complete application and requires that the make-ready work be completed within 60 days of the applicant's acceptance of the estimate.
- The bill provides that the authority may not require more make-ready work than is necessary to meet the codes specified in the bill or "industry standards."
- The bill provides that fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Though it is not clear, it appears that this provision of the bill intends to refer to noncompliance with the codes specified in the bill or industry standards.
- The bill provides that fees for make-ready work may not exceed actual costs or the amount charged to other non-wireless communications service providers for similar work.
- The bill provides that fees for make-ready work may not include any consultant fees or expenses. The FCC's regulations provide a 45-day period (60 days for certain large orders) for pole owners to conduct an engineering study to determine whether a wireless facility attachment is feasible and what make-ready work is required.[42] To the extent that an authority

[40] Under 47 U.S.C. §224, the FCC sets "just and reasonable" rates for attachments by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility. In this context, a utility means "a local exchange carrier or an electric, gas, water, steam, or other public utility who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications." The term does not include a cooperatively-owned utility or a government-owned utility. Federal law authorizes states to preempt federal regulation by electing to regulate pole attachments themselves, and, as of 2013, 19 states had chosen this option: Alaska, Arkansas, California, Connecticut, Delaware, the District of Columbia, Idaho, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Utah, Vermont, and Washington.

[41] The FCC's regulations for make-ready work under 47 U.S.C. §224 were most recently addressed in its *Report and Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 11-50 , WC Docket No. 07-245, GN Docket No. 09-51, (2011) (*2011 Pole Attachment Order)* and in its *Order on Reconsideration, Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, FCC 15-151, WC Docket No. 07-245, GN Docket No. 09-51 (2015). The FCC regulations do not apply to attachments to government-owned utility poles.

[42] *2011 Pole Attachment Order* at pp. 14-15. In its order, the FCC notes that wireless equipment varies greatly and can change rapidly, thus it may lack the engineering specifications that have been developed over time for more mature cable and wireline telecommunications equipment. *Id.* at p. 24.

does not retain in-house experts to conduct such an analysis or otherwise finds it necessary to use outside consultants or engineers to evaluate a collocation request, including a consolidated request that involves multiple pole attachments, the authority will be responsible under the bill for the additional expense of hiring consultants or engineers to determine the necessary extent of make-ready work.

Other Provisions

The bill specifies that it does not authorize a person to collocate small wireless facilities on: privately owned utility poles; utility poles owned by a municipal electric utility or electric cooperative; privately owned wireless support structures; or other private property without consent of the property owner.

The bill provides that it does not limit the authority of local governments to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted to implement these laws.

The bill provides that, except as provided in ch. 337, F.S., or specifically required by state law, an authority:

- May not adopt or enforce regulations on the placement or operation of communications facilities in the rights-of-way by a provider authorized to operate in the rights-of-way.
- Shall not regulate any communications services or impose or collect any taxes, fees, or charges not specifically authorized by state law.

B. SECTION DIRECTORY:

Section 1. Amends s. 337.401, F.S., relating to use of right-of-way for utilities subject to regulation.

Section 2. Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill appears to have a negative fiscal impact on state government revenues. According to the DOT, it currently receives revenue from space leased on DOT-owned poles. If the existing agreements are terminated, the DOT estimates, based on collections in FY 2015-2016, that it will be unable to collect $1.8 million in revenue in FY2018-19 and approximately the same amount in subsequent fiscal years.[43]

2. Expenditures:

The bill appears to have an indeterminate fiscal impact on state government expenditures. DOT expenditures related to developing leases for use of the rights-of-way for wireless facilities may be reduced through the limited review process established in the bill. To the extent that the DOT must hire consultants to determine the appropriate make-ready work necessary to ensure compliance with applicable codes and to the extent that such work is necessary to address preexisting utility pole conditions, the bill prohibits the DOT from charging those costs to collocation applicants.

[43] *DOT Analysis* at pp. 4-5.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will have a negative fiscal impact on local government revenues if the collocation rates set forth in the bill are lower than rates previously established (or that would otherwise be established under existing authority) by local government ordinance or by agreement between wireless providers and local governments. Based on information provided to staff concerning previously established or agreed rates, this appears likely. Further, to the extent that local governments must hire consultants to determine the appropriate make-ready work necessary to ensure compliance with applicable codes and to the extent that such work is necessary to address preexisting utility pole conditions, the bill prohibits local governments from recovering those costs from collocation applicants.

2. Expenditures:

The bill appears to have an indeterminate fiscal impact on local government expenditures. Local government expenditures related to adoption of ordinances and negotiation and execution of collocation agreements may be reduced through the limited review process established in the bill. To the extent that local governments must hire consultants to determine the appropriate make-ready work necessary to ensure compliance with applicable codes and to the extent that such work is necessary to address preexisting utility pole conditions, the bill prohibits local governments from charging those costs to collocation applicants.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill establishes more favorable collocation rates and terms for wireless providers who wish to deploy small wireless facilities in the public rights-of-way. To the extent that the rates and terms specified in the bill are more favorable to wireless providers than the rates and terms applicable to use of the public rights-of-way in other states, Florida may see a swifter influx of capital investment in small wireless facilities. It is unclear if Florida's wireless service customers will see lower collocation costs reflected in retail service rates, as wireless service is generally offered at nationwide rates.

D. FISCAL COMMENTS:

According to the DOT, due to the federalized nature of the interstate and highway system, the majority of the DOT's rights-of-way are subject to federal regulations regarding the use, installation, and placement of facilities within those rights-of-way. The DOT indicates that the bill will limit its ability to monitor and establish rules and policies related to the placement of wireless communication facilities and may impact necessary approvals and funding from the Federal Highway Administration.[44]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that counties and municipalities have to raise revenues in the aggregate. The bill establishes a cap on the rates that counties and municipalities may impose for collocation of small wireless facilities within the public rights-of-way under their authority. In addition, the bill prohibits counties and municipalities from recovering any consultant fees or expenses relating to the preparation of a pole within the rights-of-way for use by a wireless provider, while such preparatory work is required by the bill.

[44] *DOT Analysis* at p. 6.

The bill does not appear to qualify for an exemption or exception. Therefore, the bill may require a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines "wireless facilities" to include, among other things, "equipment associated with wireless communications." This portion of the definition appears circular and vague.

The bill provides that an application must be processed on a nondiscriminatory basis. This provision is ambiguous as the bill does not indicate the type of potential discriminatory treatment this provision is designed to protect against.

The bill requires an authority to process an application within certain timeframes. The same timeframes apply regardless of the scope of the application, i.e., whether the application is for collocation of a single small wireless facility or is a consolidated application for collocation of multiple small wireless facilities. As noted in the FCC's 2016 request for comments, a consolidated application covering multiple collocations may be quicker to review than the same number of separately submitted applications, but may take longer to review due to the potentially large number of collocations proposed in the consolidated application.[45]

The bill provides that a complete application is deemed approved if the authority fails to approve or deny the application within "60 days after receipt of the application." This provision could be clarified by replacing the quoted language with the phrase "60 days after receipt of the *complete* application."

The bill prohibits an authority from requiring an applicant to provide more information than is required of electric service providers or other communications service providers that are not wireless service providers. The intent of this provision is not clear, as such other providers do not submit permit applications to collocate small wireless facilities, and the bill does not refer to the type of permit applications submitted by such providers that may be used for comparison.

The bill refers to a measurement of a utility pole from "grade in place." The bill could be clarified by defining this term or explaining how such measurement is performed.

The bill provides that rates, fees, and terms for collocation must be, among other things, "commercially reasonable." The bill does not define this term or otherwise provide guidance on its interpretation.

The bill provides that an authority may not require more make-ready work than is necessary to meet the codes specified in the bill or "industry standards." The bill does not define "industry standards" or otherwise provide guidance on its interpretation.

IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Energy & Utilities Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The committee substitute changes the bill as follows:

[45] *FCC 2016 Notice* at p. 12.

- Preserves local government authority to enforce historic preservation zoning regulations and provides that the applicable codes under which an authority will review a collocation application include historic preservation zoning regulations that are consistent with:
    - The preservation of local zoning authority under 47 U.S.C s. 332(c)(7);
    - The requirements for facility modifications under 47 U.S.C. s. 1455(a); or
    - The National Historic Preservation Act of 1966, as amended.
    - The regulations adopted to implement these laws.
- Excludes utility poles that are owned by a municipal electric utility or used to support electric distribution facilities owned or operated by a municipality.
- Provides that the act does not authorize a person to collocate small wireless facilities on utility poles owned by an electric cooperative or municipal electric utility.
- Modifies the definition of "wireless facility" to exclude:
    - Wireline backhaul facilities.
    - Coaxial or fiber-optic cable between wireless structures or utility poles or otherwise not immediately adjacent to or directly associated with a particular antenna.

This analysis addresses the committee substitute.